

**So Ordered.**



Patina C Williams

**Patricia C. Williams  
Bankruptcy Judge**

**Dated: November 19th, 2012**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

10 In re: }  
11 LLS AMERICA, LLC, }  
12 Debtor. }  
13 \_\_\_\_\_ }  
14 BRUCE P. KRIEGMAN, solely in }  
15 his capacity as court-appointed }  
16 Chapter 11 Trustee for LLS America, }  
17 LLC, }  
18 Plaintiff, }  
19 vs. }  
CLB HOLDINGS, }  
Defendant. }  
No. 09-06194-PCW11  
Adv. No. 11-80192-PCW  
MEMORANDUM DECISION RE:  
DEFENDANT CLB HOLDINGS'  
MOTION TO DISMISS (ECF No. 14)

20        This adversary is one of hundreds commenced by the trustee of the LLS America,  
21 LLC (“LLS America”) bankruptcy estate which adversaries seek to recover money paid  
22 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme  
23 conducted by the debtor. Defendant CLB Holdings filed a motion to dismiss on  
24 December 16, 2011, ECF No. 14.

25 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written  
26 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss  
27 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

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1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal  
2 raised in the subject motion are the same as those raised in the Previous Decision. Many  
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Duane Swinton (ECF No. 24), the trustee presented evidence in  
5 this case that the defendant loaned or invested an unknown amount with either none or  
6 an unknown number of promissory notes issued. In the 31 distributions occurring  
7 between September 2003 and November 2005, the defendant received \$108,000 (CAN).  
8 By declaration (ECF No. 17), Catherine Bjarnason, on behalf of the defendant, presented  
9 evidence that it was formed under the laws of Canada, does not operate a business in the  
10 United States, and to the extent defendant received any promissory notes, those  
11 promissory notes listed Canadian entities as borrowers with distributions only made by  
12 Canadian entities. The declaration further states that the loans or investments were  
13 solicited in Canada, but no details were provided regarding the manner of solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of  
15 process; (2) improper extraterritorial application of United States bankruptcy law; and  
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.  
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set  
18 forth in the Previous Decision and applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of  
20 personal jurisdiction. Unlike the situation in the Previous Decision, this defendant did  
21 not file a proof of claim in the underlying bankruptcy case of LLS America. This  
22 defendant did, however, seek affirmative relief in this adversary. As concluded in the  
23 Previous Decision, by filing a motion to withdraw reference of this adversary to the  
24 District Court for Eastern District of Washington, the defendant requested a  
25 determination whether this court or the District Court had authority to enter final orders  
26 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting  
27 a ruling on the merits of a legal issue in this case, the defendant has consented to the  
28 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

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1        The defendant filing the subject motion had sufficient minimum contacts to  
2 establish personal jurisdiction. Many of those facts in the Previous Decision are  
3 applicable to the defendant in this case. This adversary complaint alleges that the  
4 defendant knew or should have known it was participating in a Ponzi scheme. Unlike the  
5 defendants in the Previous Decision, this defendant did not receive commissions, i.e.,  
6 compensation for soliciting or locating other investors or lenders. However, the  
7 economic activity in which the defendant engaged in was sufficient to establish  
8 minimum contacts for personal jurisdiction. For these reasons, the motion to dismiss is  
9 **DENIED**. Counsel for the defendant shall submit an order consistent with this decision.  
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11                    //END OF MEMORANDUM DECISION//  
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